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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Part 90 of the Commission's) PR Docket No. 93-144
Rules to Facilitate Future Development of) RM-8117, RM-8030,
SMR Systems in the 800 MHz Frequency Band) RM-8029

and

Implementation of Section 309(j) of the)
Communications Act -- Competitive Bidding) PP Docket No. 93-253
800 MHz SMR)

To: The Commission

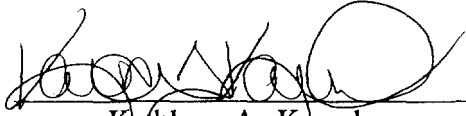
COMMENTS

Eden Communications, Inc. (Eden), by its attorneys, hereby submits its Comments in the above-captioned matter. Eden opposes the adoption of the proposals contained within the FNPRM. Insofar as Eden's Reply Comments to the matter from which this FNPRM was derived are relevant, those Reply Comments are hereby incorporated herein, see, attached.

Eden would like to voice its opposition to the Commission plan to divide the country along Metropolitan Trading Area lines and auction 200 of the currently-allotted SMR frequencies to the winning bidder. It is Eden's belief that such a

plan is impractical and unworkable, and if attempted, would injure the already established SMR industry.

Respectfully submitted,
EDEN COMMUNICATIONS, INC.

By 
Kathleen A. Kaercher

Brown and Schwaninger
Suite 650
1835 K Street, N.W.
Washington, D.C. 20006
202/223-8837

Dated: January 5, 1995

RECEIPT COPY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Implementation of Sections 3(n) and 332) GN Docket No. 93-252
of the Communications Act)
)
Regulatory Treatment of Mobile Services)

JUN 11 1994

To: The Commission

REPLY COMMENTS

Eden Communications, Inc. (Eden), by and through counsel, hereby offers reply comments in the above captioned rule making. Eden owns and operates SMR facilities in and about the Salinas, California, area and therefore, is intensely interested in the outcome of these proceedings as they may impact on its present and future business. By its experience, Eden is also qualified to make meaningful comment and to assist the Commission in engaging in its efforts to make an informed and reasoned decision in this matter.

Eden Opposes Nextel's Proposal

Eden hereby goes on record before the agency in staunch opposition to Nextel Communications, Inc.'s (Nextel) proposals contained within its comments filed with the Commission in this matter on June 20, 1994. Contained within Nextel's proposals

are repeated demands for special treatment for which there exists no equitable or legal basis. Eden, therefore, requests that the Commission reject and summarily deny any consideration of Nextel's proposal as contrary to the public interest and the interests of Eden and other similarly situated analog SMR operators.

That enactment of Nextel's proposals would harm innocent SMR operators and their end users is without question. Frequency exchanges with existing systems must necessarily create logistical problems, cost, service outages, disruptions, relicensing problems, and a host of ills to be visited upon persons who will receive no benefit from the enactment of the proposals. These harms are unjustified and Nextel's proposal provides no compensation to the injured persons which arises even close to the level of harm that would be inflicted.¹

Nor would the creation of monopoly carriers within MTAs provide any public interest benefit. Instead, the consolidation of spectrum claims within major and later secondary markets would create anti-competitive results and are highly suspect in their legal bases. Accordingly, Eden can discern no rational or legal basis for grant of Nextel's proposals.

¹ Nor has Nextel shown with any level of satisfaction that its proposal can be brought forward without violating applicants' Ashbacker rights. Certainly, a spectrum reallocation while mutually exclusive applications are pending before the Commission for the very frequencies which Nextel seeks, would adversely affect the rights of the applicants for those frequencies, by removing their right to receive authority to operate on that spectrum.

The Cost To The Public

As stated above, end users of analog SMR systems would suffer by grant of Nextel's proposals. Their equipment would have to be taken out of service for some period of time and much of the equipment would require replacement. Late shipments and back orders would further exacerbate the problem for which Nextel has provided no assurance of a smooth transition, either on a single system or for the hundreds of SMR systems which would be affected. The Commission need look no further than the number of ESMR customers presently served by the Nextel system, five thousand, and the number of end users which would be harmed by grant of the proposal, over a million, to determine that Nextel's proposal cannot withstand scrutiny when a public interest analysis is properly applied.

Nextel's proposal also does not examine the resulting effects across the industry that such a radical displacement and replacement of licensed spectrum might cause. Intermodulation problems might result. Site leases may require renegotiation and modification. Management agreements may be rendered void. Pending equipment purchases would be retarded. Efficiencies of operations designed to operate most effectively with particular authorized frequencies might be adversely affected. In sum, Nextel's claims that such a change in the licensing of SMR facilities would be either simple, smooth or cost effective, is not borne out by a complete review of the facts.

Beyond the cost of retrofitting, renegotiation, retuning, replacing and reexamining every aspect of the analog SMR industry, there are other costs which would inevitably be borne by the public. Presently, analog SMR operators provide a valued and cost effective service to the public at a price which is acceptable for the operation of fleets of trucks, agricultural use, public safety use, and a myriad of other services. SMR service has continued to thrive in the face of cellular and PCS and now, ESMR, because it provides high quality communications service to the public at a reasonable price.

Nextel's proposal seeks to take away this cost effective method of providing service to the public by taxing the public for Nextel's special benefit. The public would necessarily see its costs for service increase due to the cost of the frequency exchange which Nextel has not offered to accept. The public would see increases arising out of less competition in the marketplace. The public would bear the cost of service outages arising out of the doubtlessly chaotic effects to be felt in the market following enactment of this proposal. The Commission should, therefore, note that it is not in the public interest to pay higher prices for service which the public does not desire.

Eden admits that analog SMR service may not be the "cutting edge" of technology. It may not be able to provide all of the services which Nextel claims its system will eventually produce. However, Eden respectfully submits that based on

sales and service figures, analog SMR service is one of the most successful technologies ever to be created for the purpose of serving the public interest. This claim is supported by every statistic available.

There are some consumers who require additional services, particularly services involving interconnection with the public switched telephone network. These consumers are willing to pay for those services in higher air time charges and other related fees. The cellular industry has found that market and has been quite successful in meeting all of that market's demands long before Nextel existed. Now the Commission believes it is time to deliver additional services to the public, including high-speed data transmissions to mobile units and, perhaps, video transmission. Enter PCS and the promises that it holds, including a price tag that is reasonably expected to be quite higher than analog SMR.

The Commission must recognize that, for every consumer of an emerging technology, there are many others whose businesses are better served by a more traditional service.² Economies of scale have been produced, the service has been made reliable and deliverable, and the cost to the consumers has been reduced by time. It

² Indeed, the Commission did recognize this fact in its decision granting Fleet Call, Inc.'s waiver, when it stated, "we acknowledge the need to preserve for existing licensees in Fleet Call's markets both the protection from interference guaranteed them by our rules and the flexibility they too require to operate competitively and effectively." Memorandum Opinion and Order in File No. LMK-90036, 6 FCC Rcd. 1533 at footnote to para.13, recon. denied, 6 FCC Rcd. 6989 (1991).

is incumbent, therefore, on the Commission not to rush to declare that a service is obsolete or unnecessary or unwanted, simply based on the next "re-invention of the wheel." Newer is not necessarily better. Grander is not necessarily more efficient or desirable. Spectrum efficiency standing alone will not serve the public interest. The public interest is determined by a single, but often complex, axiom. Give the public what it wants. The public has demonstrated clearly and consistently that it has a need and a desire for low-cost, traditional, analog SMR service. No act by the Commission should take from the public what it has expressed a lasting desire to keep – the ability to quietly enjoy use of the radio spectrum in the provision of traditional SMR service.

Nextel's proposals are a threat to the continuation of entrepreneurs' ability to deliver service to the public. Despite Nextel's claims to the contrary, reality will demonstrate that the advantages which Nextel demands will wreak an obvious and pervasive hardship on analog SMR operators and their end users. The realization of that threat might end the ability of many SMR operators to compete in the marketplace. This is not beneficial to the public who depends on these operators' systems and the competitive prices they charge. For these reasons standing alone, the Commission must reject Nextel's proposals as contrary to the public interest.

Eden Wishes To Choose Its Destiny

It may easily come to pass that Eden will choose at some future time to convert its system to digital technology. That time will likely occur when such a change can

occur without a concurrently rapid increase in charges to subscribers, so that Eden may remain competitive within its market. At that time, Eden will deliver the promise of greater spectrum efficiency at costs that Eden deems reasonable and at prices that the market dictates.

Eden further contends that if it chooses to accept a digital technology, it will choose one which is in harmony with its co-channel neighbors. It does not intend to select or develop a technology which will not work unless it gains special treatment from the Commission. By taking these reasonable steps, Eden will increase its growth and capacity and the quality of its services, without any need or justification to complain to the Commission that its neighbors, operating in strict accord with their licenses and the Commission's Rules, are causing harm to Eden's business plans. These actions are to be expected from any rational telecommunications provider.

But Nextel's impatience to justify the billions of dollars in securities it has sold to the public and to foreign corporations appears to be a threat to Eden's ability to choose its own course. Instead, Nextel would dictate to Eden and others, claiming that Eden's service is not important enough or not advanced enough or not financed enough to entitle Eden to decide its own future. Eden must frankly state that it cares not a whit whether Nextel improves its book value or debt-to-equity ratio or price-earnings ratio or whatever other measure of its success it chooses. Nor would Eden expect Nextel to be concerned with whether Eden succeeds. That is as it should be. Eden

does, however, take exception to Nextel's efforts when those efforts will adversely impact Eden's business. Nextel's success or failure should not be dependent on Eden's acquiescence to Nextel's business or technical strategy. Nor should the Commission require any such sacrifice of Eden.

Nextel Should Consider Another Method

If Nextel desires its own spectrum reserve for future operations, Nextel should petition the Commission for a spectrum allocation – perhaps out of the spectrum to be placed into civilian use following federal abandonment. The Commission's Rules would accommodate such a request and Nextel could make its case for that spectrum.

Nextel might also solve its problems by selection of a less vulnerable technology. Presently, General Electric's EDACS system does not appear to suffer the same problems as those claimed by Nextel in its comments. Therefore, it could simply be that Nextel has chosen the wrong equipment supplier or that its equipment supplier made claims on which it, in fact, could not deliver.

The fact that Nextel's system suffers from a deficiency in design is noted in the operation of Nextel's digital receivers, which require a broadly tuned "front end" and intermediate frequency sections operating in conjunction with mobile units with a relatively low ERP. This design creates a substantial disadvantage in operation as compared with traditional 800 MHz mobile and control equipment operating at higher

ERPs within the same environment, resulting in a desired-to-undesired signal ratio which is the reverse of that recommended by the Commission for efficient operation within the 800 MHz band. It is beyond question that this result must have been fully expected by Nextel and the designer of Nextel's equipment, which can be held to have had full knowledge of the radio environment in which Nextel's system was to operate.³ Therefore, the Commission might direct Nextel to simply redesign its system to achieve harmonious operation within the radio environment, without the need to involve disinterested analog SMR operators.

Or perhaps Nextel could do just what it has been doing – buying up those businesses and systems which stand between it and operation of an efficient radio system. Following the cash infusion announced to be provided from MCI, it appears that Nextel possesses the economic resources to choose this time-honored path. A company can solve a whole host of ills with a billion dollars.⁴

³ If the Commission determines that Nextel knew that its design would require additional accommodation from the Commission and Nextel withheld such information from the Commission within its request for waiver, the Commission should allow Nextel the full effect of its lack of candor.

⁴ The Commission may officially note that Nextel's enormous financial resources are, in part, the leveraging of its tremendous spectrum resources from which the Commission is yet to see a viable service offered to the public. In fact, a review of Nextel's authorizations and the construction of the channels listed thereon, would likely demonstrate that Nextel has failed to construct most of the channels for which it holds authority. Accordingly, it would be appropriate for the Commission to consider whether Nextel's authority should be revised to encourage more activity directed toward the provision of service to the public, and less activity directed at selling stock to the public.

But even if Nextel were willing to place every dollar which it intends to receive from MCI into a trust fund to pay the true and complete cost of the enactment of its proposals to SMR operators and their end users and the Commission, that huge amount of money could not adequately finance the activity. It appears, therefore, that Nextel cannot afford that which it seeks. Nor can the public afford that which Nextel seeks.

Conclusion

For the foregoing reasons, Eden Communications, Inc. respectfully requests that Nextel's comments and proposals be denied and rejected by the Commission.

Respectfully submitted,
EDEN COMMUNICATIONS, INC.

By



Kathleen A. Kaercher

Brown and Schwaninger
Suite 650
1835 K Street, N.W.
Washington, D.C. 20006
202/223-8837

Dated: July 11, 1994

CERTIFICATE OF SERVICE

I, Nakia M. Marks, hereby certify that on this 11th day of July, 1994, I caused a copy of the attached Reply Comments to be served by hand delivery or first-class mail, postage prepaid to the following:

Chairman Reed E. Hundt
Federal Communications Commission
Room 814
1919 M Street, NW
Washington, D.C. 20554

Commissioner H. Quello
Federal Communications Commission
Room 802
1919 M Street, NW
Washington, D.C. 20554

Commissioner Andrew C. Barrett
Federal Communications Commission
Room 826
1919 M Street, NW
Washington, D.C. 20554

Commissioner Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, NW
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
Room 844
1919 M Street, NW
Washington, D.C. 20554

Blair Levin
Federal Communications Commission
Room 814
1919 M Street, NW
Washington, D.C. 20554

Karen Brinkmann
Federal Communications Commission
Room 814
1919 M Street, NW
Washington, D.C. 20554

Rudolfo M. Baca
Federal Communications Commission
Room 802
1919 M Street, NW
Washington, D.C. 20554

Byron Marchant
Federal Communications Commission
Room 826
1919 M Street, NW
Washington, D.C. 20554

Jan Mago
Federal Communications Commission
Room 844
1919 M Street, NW
Washington, D.C. 20554

Rosalind K. Allen
Federal Communications Commission
Room 832
1919 M Street, NW
Washington, D.C. 20554

Ralph A. Haller
Chief, Private Radio Bureau
Room 5002
Federal Communications Commission
2025 M Street, NW
Washington, D.C. 20554

Beverly G. Baker
Private Radio Bureau
Federal Communications Commission
Room 5002
2025 M Street, NW
Washington, D.C. 20554

David Furth
Private Radio Bureau
Federal Communications Commission
Room 5202
2025 M Street, NW
Washington, D.C. 20554

Ron Netro
Private Radio Bureau
Federal Communications Commission
Room 5002
2025 M Street, NW
Washington, D.C. 20554

A. Richard Metzger, Jr.
Acting Chief
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, NW
Washington, D.C. 20554

Gerald Vaughn
Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, NW
Washington, D.C. 20554

John Cimko
Mobile Service Division
Federal Communications Commission
Room 644
1919 M Street, NW
Washington, D.C. 20554

Terry Fishel
Chief, Land Mobile Branch
Licensing Division
Federal Communications Commission
1270 Fairfield Road
Gettysburg, Pennsylvania 17325

Alan R. Shark
President
American Mobile Telecommunications
Association
1150 - 18th Street, NW, Suite 250
Washington, D.C. 20036

Elizabeth Sachs
Lukas, McGowan, Nace &
Gutierrez
Suite 700
1819 H Street, NW
Washington, D.C. 20006

Mary Broomer
Mike Kennedy
Joe Vestel
Motorola, Inc.
Suite 400
1350 Eye Street, NW
Washington, D.C. 20005

Mark Crosby
ITA, Inc.
Suite 500
1110 N. Glebe Road
Arlington, Virginia 22201

Alan Tilles
Meyer, Faller, Weisman &
Rosenberg
Suite 380
4400 Jennifer Street, NW
Washington, D.C. 20015

Michael Carper
General Counsel
OneComm
Suite 500
4643 S. Ulster Street
Denver, Colorado 80237

Bill Dekay
Dial Page
Suite 700
301 College Street
Greenville, South Carolina 29603-0767

Russell H. Fox
Gardner, Carton & Douglas
Suite 900, East Tower
1301 K Street, NW
Washington, D.C. 20005

Willard K. Shaw
Mobile Radio Communications
2226 Vista Valley Lane
Vista, California 92084

Carole C. Harris Christine M. Gill
Tamara Y. Davis Keller & Heckman
1001 G Street, NW
Suite 500 West
Washington, DC 20001

David C. Jatlow
Young & Jatlow
2300 N Street, NW
Washington, DC 20037

Donald M. Mukai
Jeffrey S. Bork
U.S. West, Inc.
1020 19th Street, NW
Suite 700
Washington, DC 20036

Paul J. Feldman
Fletcher, Heald & Heldreth
11th Floor
1300 North 17th Street
Rosslyn, Virginia 22209

Jeffery L. Sheldon
Sean A. Stokes
1140 Connecticut Avenue, NW
Suite 1140
Washington, DC 20036

Brian Kidney
Pamela Riley
425 Market Street
San Francisco, California 94108

Kenneth G. Starling
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, NW
Washington, DC 20004

David A. Gross
Kathleen D. Abernathy
1818 N Street, NW
Washington, DC 20036

John T. Scott, III
Charon J. Harris
William D. Wallace
Crowell & Moring
1001 Pennsylvania Avenue, NW
Washington, DC 20004

Philip L. Spector
Susan E. Ryan
Paul, Weiss, Rifkind, Wharton & Garrison
1615 L Street, NW
Washington, DC 20554

William J. Balcerski
Edward R. Wholi
120 Bloomingdale Road
White Plains, New York 10605

Leslie A. Taylor
Leslie Taylor Associates
6800 Carlynn Court
Bethesda, MD 20817

Robert S. Foosaner, VP
Nextel Communication, Inc.
800 Connecticut Avenue, NW
Suite 1001
Washington, DC 20006

Norman P. Leventhal
Raul R. Rodriguez
Levental, Senter & Lerman
2000 K Street, NW
Suite 600
Washington, DC 20006

Gail L. Polivy
1850 M Street, NW
Suite 1200
Washington, DC 20036

Susan H-R. Jones
Gardner, Carton & Douglas
1301 K Street, NW
Suite 900 East Tower
Washington, DC 20005

Cathlen A. Massey
McCaw Cellular, Inc.
1150 Connecticut Avenue, NW
4th Floor
Washington, DC 20036

William J. Franklin, Chartered
1919 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20006

Frederick M. Joyce
Christine McLaughlin
Joyce & Jacobs
2300 M Street, NW
Suite 130
Washington, DC 20037

Fredrick J. Day
1110 N Glebe Road
Suite 500
Arlington, VA 22201

Thomas J. Caey
Jay L. Birnbaum
Timothy R. Robinson
Skaddon, Arps, Slate, Meagher & Flom
1440 New York Avenue, NW
Washington, DC 20006

Wayne Black
Dorothy E. Cukier
Keller & Heckman
1001 G Street, NW
Suite 500 West
Washington DC 20001

Jay C. Keithley
Leon Kestenbaum
Sprint Corp.
1850 Street, NW
Suite 1100
Washington, DC 20036

Kevin Gallaher
8725 Higgins Road
Chicago, IL 60631

Craig T. Smith
P.O. Box 11315
Kansas City, MO 64112

Harold C. Davis
Smartlink Development LP
1269 S. Broad Street
Willingford, Connecticut 06492

W. Bruce Hanks, President
Century Cellunet, Inc.
100 Century Park Avenue
Monroe, LA 71203

Henry Goldberg
Jonathan L. Wiener
Daniel S. Goldberg
Goldberg, Godles, Wiener & Wright
1229 19th Street, NW
Washington, DC 20036

J. Barclay Jones, VP
American Personal Communication
1025 Connecticut Avenue, NW
Washington, DC 20036

Mark J. O'Conner
Mark J. Tanber
Piper & Marbury
1200 19th Street, NW
7th Floor
Washington, DC 20036

Jim O. Elewellyn
William B. Barfield
1155 Peachtree Street, NE
Atlanta, Georgia 30309-3610

Charles P. Featherstun
David G. Richards
1133 21st Street, NW
Washington, DC 20036

Robert A. Mazer
Nixon, Hargrave, Devans & Doyle
One Thomas Circle, NW
Suite 800
Washington, DC 20005

William R. Miller
Russ Miller Rental
3620 Byers Avenue
Fort Worth, TX 76107

Michael Hirsch,
VP External Affairs
Geotek Communications
1200 19th Street, NW #607
Washington, DC 20036

Robin G. Nietert
Scott C. Cinnarion
Brown, Nietert & Kaufman, Chartered
1920 N Street, NW
Suite 660
Washington, DC 20036

Raymond G. Bender, Jr.
J.G. Harrington
Leonard J. Kennedy
Laura H. Phillips
Richard S. Dennins
Dow, Lohnes & Albertson
1255 23rd Street, NW
Suite 500
Washington, DC 20037

Gerald S. McGowan
George L. Lyon, Jr.
Thomas Gutierrez
David A. LaFuria
Lukas, McGowan, Nace & Gutierrez,
Chartered
1819 H Street, NW
7th Floor
Washington, DC 20006

Stephen G. Kraskin
Cardessa D. Bennet
Karskin & Associates
2120 L Street, NW
Suite 810
Washington, DC 20037

Richard Rubin
Fleishmann & Walsh
1400 16th Street, NW
Suite 600
Washington, DC 20036

Elliot J. Greenwald
Howard C. Griboff
Fisher, Wayland, Cooper, Leader, &
Zaraguza, L.L.P.
2001 Pennsylvania Avenue NW Suite 400
Washington, DC 20006

Lon C. Levin, VP
American Mobile Satellite Corp.
10802 Parkridge Boulevard
Reston, VA 22091

Andrea S. Miano
Reed, Smith, Swaw & McClay
1200 18th Street, NW
Washington, DC 20036

Thomas J. Keller
Verner, Liipthert, Bernhard, McPherson &
Hand, Chartered
901 15th Street, NW
Suite 700
Washington, DC 20005

Robert Fay
Police Emergency Radio Service, Inc.
82 Herbert Street
Franinham, MA 01701

Alan C. Campbell, Pres.
FCBA
1722 Eye Street, NW
Suite 300
Washington, DC 20006

Donald J. Elardo
Larry A. Blooser
Gregory F. Intoccia
1801 Pennsylvania Avenue, NW
Washington DC 20006

Frank Michael Panek
2000 W Ameritech Center Drive
Hoffman Estates, IL 60196-1025

James Bradford Ramsay
102 Commerce Commission Building
Constitution Avenue, & 12th St., NW
Washington, DC 20423

Daryl L. Avery
DC Public Service Commission
450 5th Street, NW
Washington, DC 20001

David A. Reams, Pres.
Grand Broadcasting
P.O. Box 502
Perryburg, OH 43552

Anne P. Jones
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, NW
Washington, DC

Edward R. Wholl
120 Bloomingdale Road
White Plains, NY 10605

Albert H. Kramer
Robert F. Aldrich
David B. Jeppsen
Keck, Mahin & Cate
1201 New York Avenue, NW
Washington, DC 20005-3919

David Cosson
2626 Pennsylvania Avenue, NW
Washington, DC 20037

Martin T. McCul, VP
900 19th Street, NW
Suite 800
Washington, DC 20006

Michael J. Shortley, III
180 South Clinton Avenue
Rochester, NY 14646

Jan M. Reed
Route 5, Box 180-W
Crossville, TN 38555

Terrence P. McGarty
Telmarc Telecommunication
265 Franklin Street
Suite 1102
Boston, Massachusetts 02110

Corporate Technology Partners
100 S. Ellsworth Avenue, 9th Floor
San Mateo, CA 94401

Rodney Joyce
Ginsburg, Feldman & Bress
1250 Connecticut Avenue, NW
Washington, DC 20036

Ellen S. Levine
CA Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Joel Levy
Cohn & Marks
1333 New Hampshire Avenue, NW
Washington, DC 20036

Thomas A. Strov
Mark Golden
Telocator
1019 19th Street, NW
Suite 1100
Washington, DC 20036

Richard M. Tettlebaum
Gurman, Kurtis, Blask & Freedman,
Chartered
1400 16th Street, NW
Suite 500
Washington, DC 20036

Carl Northrop
Bryan Cave
700 13th Street, NW
Suite 700
Washington, DC 20005

Koteen & Naftalin
1150 Connecticut Avenue
Washington, DC 20036

W. Bruce Hanks, Pres.
Century Cellunet, Inc.
100 Century Park Avenue
Monroe, LA 71203

Linda Sadler
Rockwell International Corp.
1745 Jefferson Davis Highway
Arlington, VA 22202

G.A. Gorman
North Pittsburgh Telephone Company
4008 Gibsonia Road
Gibsonia, PA 15044-9311

Penny Rubin
State of New York Department of Public
Service
Three Empire State Plaza
Albany, NY 12223

David Jones
Government and Industry Affairs
Committee
2120 L Street, NW Suite 810
Washington, DC 20037

Michael Hirsch
1200 19th Street, NW
Suite 607
Washington, DC 20036

David Hill
Audrey Rasmussen
O'Conner & Hannan
1919 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20006-3483

John Lane
Robert Gurss
Wikes, Artis, Hedrick & Lane, Chartered
1666 K Street, NW
Washington, DC 20006

Robert B. Kelly
Douglas Povich
Kelly, Hunter, Mow & Povich, P.C.
1133 Connecticut Avenue, NW
Washington DC 20036

Corwin Moore, Jr.
Personal Radio Steering Group
P.O. Box 2851
Ann Arbor, Michigan 48106

Marjorie Esman
Hardy and Carey
111 Veterans Boulevard
Metairie, LA 70005

Shirley Fuji Moto
Brian Turner Ashby
Keller and Heckman
1001 G Street NW
Washington, DC 20001

Kathy Shobert
Director of Federal Regulatory Affairs
888 16th Street, NW Suite 600
Washington, DC 20006


Nakia Marks